SUPREME COURT, U. S.

No. 595

Office-Supreme Court, U.S.
FILED
OCT 15 1964
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

ALICE SCHURINGA, ANNA C. FOUT, DR. PAUL THORELIUS, and JOSE M. LENONE,

Petitioners,

vs.

CITY OF CHICAGO, a Municipal Corporation, RICHARD J. DALEY, individually and as Mayor of said City, CARL H. CHATTERS, individually and as Comptroller of said City, JAMES W. JARDINE, individually and as Commissioner of the Department of Water and Sewers of said City, and W W. DE BERARD, individually and as Deputy Commissioner for Water of said Department and Chief Water Engineer in Charge of the Bureau of Water,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

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Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

To The Honorable, The Chief Justice and Associate Justices of the Supreme Court of the United States:

Your petitioners Alice Schuringa, Anna C. Fout, Dr. Paul Thorelius, and Jose M. Lenone, respectfully pray that a Writ of Certiorari be issued to review the decision of the Illinois Supreme Court entered in the above cause on March 18, 1964.

JUDGMENT AND OPINION OF THE COURT BELOW

On March 18, 1964, the Supreme Court of Illinois affirmed the judgment of the lower Court in the above-entitled cause. The opinion of the Supreme Court of Illinois is printed and attached hereto, marked "Appendix 'A' ". Said opinion is reported in Volume 198, North Eastern Reporter, 2d Series, at pages 326 through 334, respectively.

JURISDICTION

The opinion of the Supreme Court of Illinois was filed and entered on March 18, 1964. Petitioners, in due time, filed a petition for rehearing, which was denied on May 19, 1964. On August 17, 1964, Honorable Arthur J. Goldberg, one of the Associate Justices of this Court, entered an order extending the time for filing a petition for writ of certiorari herein to and including October 16, 1964.

This Court has jurisdiction to review the final judgment of the Supreme Court of Illinois rendered in this cause by writ of certiorari, under Section 1257(3) of Title 28, United States Code.

QUESTIONS PRESENTED FOR REVIEW

I.

Whether or not it violates the religious freedoms guaranteed by the First Amendment of the U. S. Constitution to Petitioner Lenone and other adherents of the Christian Science faith, for the City of Chicago to "medicate" them against their will with fluoride administered through their water supply.

II.

Whether or not it violates the personal liberties guaranteed by the Fourteenth Amendment of the U. S. Consti-

tution to petitioners herein, for the City of Chicago to "medicate" them against their will with fluoride administered through their water supply.

III.

Whether or not the City of Chicago has violated its police powers by "medicating" petitioners against their will with fluoride administered in their water supply, when such measures are not necessitated by pressure of great public dangers or requirements of public safety, and certain persons can actually be harmed by fluoridation.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The applicable portion of the First Amendment to the U. S. Constitution provides:

> "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof."

The pertinent portion of the Fourteenth Amendment to the United States Constitution reads as follows:

> "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

For the pertinent portion of Section 26.1, Chapter 110, Illinois Revised Statutes, entitled "Intervention", see Appendix "E" hereto.

For the text of the resolution adopted June 16, 1954, relating to fluoridation of drinking water in the City of Chicago, see Appendix "E" hereto.

STATEMENT OF THE CASE.

This case was filed by Alice Schuringa, Anna C. Fout, Dr. Paul Thorelius, and Walter Olson, taxpayers and contributors to the water fund of the City of Chicago, against the City and certain of its officials, seeking to enjoin the City and those officials from fluoridating the City's water supply. The case was filed shortly after fluoridation of the City's water supply commenced (on May 1, 1956).

In addition to being taxpayers and contributors to the water fund, Alice Schuringa and Anna Fout were housewives, Dr. Thorelius was a dentist, objecting to fluoridation as a member of that profession, and plaintiff Walter Olson was a member of the Christian Science faith, being opposed to fluoridation of the Chicago water supply because of the fact that it violated the religious beliefs and rights of said faith, and the religious freedom of its members, guaranteed to them by the First Amendment of the U. S. Constitution, and Section 3 of Article II of the Illinois Constitution.

The "enacting clause" of the Resolution of the City Council of the City of Chicago involved in this cause (Appendix "E" hereto), adopted June 16, 1954, and purporting to provide for fluoridation of the City's drinking water, is as follows:

> "Now, Therefore, Be It Resolved, That the fluoridation of *the water supplied for drinking purposes* through the Chicago waterworks system is hereby declared to be in the interests of the public health, and that steps for the introduction of fluoride in a concentration adequate for safety and in accordance with the regulations prescribed by the Illinois Department of Public Health be undertaken by the City of Chicago

through its Department of Water and Sewers with the cooperation of the Chicago Board of Health by January 1, 1955." (Emphasis added.)

After a number of preliminary hearings the taking of evidence began on October 17, 1958, before Honorable Mayer Goldberg, Master in Chancery of the Superior Court of Cook County, to whom the case had been referred. Fifty-one hearings were held before Master Goldberg, the last one on December 7, 1960. In support of their plea for a permanent injunction, petitioners called twelve witnesses, including Dr. J. H. Mick of Laurel Springs, New Jersey, Dr. Frederick B. Exner of Seattle, Washington, Dr. George L. Waldbott of Detroit, Michigan, and Dr. Melvin Page of St. Petersburg, Florida, fluoridation experts. In opposition, respondents called thirteen witnesses, including three officials of the City of Chicago water department, Dr. J. R. Blayney, Dr. H. Trendly Dean (known as the "Father of Modern Fluoridation" and originator of the so-called "Dean Studies" which largely form the basis of modern fluoridation), Dr. J. Roy Doty, Dr. John M. Frankel, Dr. Norman H. Olsen, and Dr. Philip H. Suess.

The transcript of proceedings before Master Goldberg aggregates 2930 pages. Master Goldberg rendered an extensive report (Ab. 35),* in which he found all issues in this cause against the plaintiffs and recommended to the Court that the complaint in this cause be dismissed. Plaintiff's objections to the Master's Report were overruled. The Court (Honorable Samuel B. Epstein, presiding) permitted the said objections to stand as plaintiffs' exceptions to the Master's Report and set the matter down

* Note: Reference is to abstract of record filed herein.

for hearing, at the conclusion of which Judge Epstein rendered his judgment (Ab. 109 and "Appendix 'D'" hereto), approving the Master's Report in all respects, and dismissing the complaint in this cause, decreeing however, that because of the nature of the case, the Master's fee in the amount of $6,937.50 should be paid one-half by the plaintiffs and one-half by the defendants.

A direct appeal to the Illinois Supreme Court was then taken. The Supreme Court had jurisdiction to entertain a direct appeal because the case involved the validity or construction of the Resolution purporting to provide for fluoridation of the City of Chicago's drinking water, and involved Constitutional questions; that these matters are involved was recognized and certified by Judge Epstein, the trial judge, in his decree. (Ab. 109 and Appendix "D" hereto)

Briefs of the parties were filed and on November 26, 1963, this cause was argued before the Illinois Supreme Court. After the case had been taken under advisement the late William C. Wines, Esq., at a hearing before Honorable Walter V. Schaefer on December 24, 1963, filed what purportedly was a motion to dismiss the appeal of Plaintiff Walter Olson, and counsel for petitioners was granted leave to file counter-suggestions in opposition to the said motion. The counter-suggestions, dated December 30, 1963, urged that the said motion be dismissed and that this cause be considered on its merits just as it had been submitted to the Illinois Supreme Court on the record, on the briefs of the respective parties, and as it was argued orally. Ample authorities were cited in support of the counter-suggestions (which are hereto appended as "Appendix 'C'"). On December 30, 1963, before an order on the motion had been entered, Walter Olson passed away.

As soon as it was learned that Walter Olson had passed away, on January 10, 1964, a petition was filed by Jose M. Lenone, also a member of the Christian Science faith, seeking leave to intervene as a party in this cause. Said petition, appended hereto as "Appendix 'B' ", was filed pursuant to the provisions of Section 26.1 of the Illinois Civil Practice Act, which permits intervention as of right "when the representation of the applicant's interest by existing parties is or may be inadequate and the applicant will or may be bound by a judgment, decree or order in the action . . . ". Petitioner Lenone sought to intervene because the untimely death of Walter Olson had brought about a situation whereby no Christian Scientist remained a party herein.

On January 21, 1964, the Court denied, without hearing, petitioner Lenone's application to intervene, erroneously, as petitioners contend.

On March 18, 1964, the Illinois Supreme Court affirmed the judgment of the lower Court, its opinion including the following:

> "As to the plaintiff Olson it was contended below and in the brief filed in this Court, that the fluoridation program was compulsory medication which violated the right to religious freedom guaranteed him by the first and fourteenth amendments to the Federal Constitution. However, the latter issue, no stranger to the halls of justice in the setting here raised, . . . has become moot and is no longer an issue in the appeal, under the circumstance that the plaintiff Olson has voluntarily withdrawn and obtained a dismissal of the appeal as it relates to him. It is axiomatic that this Court, *unless the public interest demands it*, will not consider abstract questions, . . . " (Emphasis added.)

The Court's opinion ignored any consideration of the vital religious issues herein as they pertain to petitioner Lenone and other members of the Christian Science faith. Petitioners contend that the public interest did demand consideration of this question by the Court, the continuing administration of fluoride by the City of Chicago to petitioner Lenone and other members of his faith, against their will, and in violation of their religious liberties, certainly being no "moot" matter.

Petitioners have never requested the City to provide dental care. Neither petitioners nor any other citizens of Chicago have had an opportunity to vote for or against fluoridation.

The alleged purpose of fluoridation is to reduce tooth decay in children between the ages of six and twelve years through administration of fluoride in the water they drink The fluoride taken in by the child is distributed systemically, a portion of the fluoride reaching the "tooth buds" of developing teeth before they erupt, or emerge from the gums. It is claimed by proponents of fluoridation that the fluoride incorporated into the tooth enamel during this formative period makes the finally-erupted tooth more resistant to tooth decay. It is not claimed, however, that the fluoride taken in after the teeth are formed and erupted has any effect upon tooth decay. The sole purpose of fluoridation is thus to systemically administer fluoride to children while their teeth are in the formative stage, with the ostensible object of making the enamel in the completed tooth more decay-resistant.

The distribution of fluoridated water by the City during 1958 was 234 gallons per person per day. The fluoridated water so distributed was used not only for "drinking purposes" but for all of the other uses to which water

may be put. (Ab. 244) As already noted, the Resolution of the City Council involved in this cause specified only that steps be taken for fluoridation of "water supplied for drinking purposes" and did not direct that water for every other use be fluoridated. Nevertheless, more than a billion gallons per day is being distributed through the City's water supply system, a comparatively small portion thereof being used for drinking purposes and the rest being used for industrial uses, washing automobiles, flushing toilets, making beer, sprinkling lawns, taking baths, etc.

It is agreed that there are variations in the fluoride content of the fluoridated water at various times and at various places in the water-supply system and that the desired uniformity of fluoride concentrate of one part of fluoride to a million parts of water has not been attained. It is undisputed and conceded by the parties to this cause that a number of other methods of dispensing fluoride are available where the dosage can be controlled and is specifically directed to the individual being treated. (*E.g.*, pills, capsules, solutions, fluoridated milk, fluoridated mouth wash, fluoridated toothpaste, "topical" application —see Ab. 128, 129, 130, 183, 549, 654.)

It is agreed also that there is the widest variability in individual water consumption and that the dosage of fluoride administered ultimately becomes dependent upon the thirst of the water drinker rather than a matter for medical or scientific determination and control.

It is agreed that whether the drinker of fluoridated water gets "too much", "too little", or the "right amount", depends to a large extent upon the amount of such water he or she consumes.

It is agreed herein that proper regulation and control of the amount of the fluoride taken into the system is of

the utmost importance and that consumption of too much fluoride can poison the individual who consumes it and have the most dangerous results.

Admittedly there is only one practicable and public source of water in the City of Chicago. It is contended herein that it violates the religious freedoms guaranteed by the First Amendment of the U. S. Constitution to Petitioner Lenone and other adherents of the Christian Science faith, for the City of Chicago to "medicate" them against their will with fluoride administered through that water supply.

Petitioners also contend that the addition of fluoride to the public water supply of the City results in mass medication and violates the Constitutional rights of the citizens to due process of law guaranteed to them by the Fourteenth Amendment of the Constitution of the United States.

Petitioners further submit herein that the City of Chicago has grossly violated its police powers by "medicating" petitioners against their will with fluoride administered in their water supply, when such measures are not necessitated by pressure of great public dangers or requirements of public safety, and certain persons can actually be harmed by fluoridation.

In this regard, evidence herein not only discloses that the method of administering fluoride in use by the City is wasteful and uneconomic, there being economical, alternative methods available, but the method of administering fluoride adopted by the City also makes it impossible to regulate the dosage of fluoride consumed by the individual water user.

Admittedly, "dental caries", or "tooth decay" is not a contagious or infectious disease which could possibly cause an epidemic, thus requiring application of the City's police

powers to protect the public safety. The evidence herein also conclusively shows that a substantial number of children residing in Chicago will actually be harmed by fluoridation, through causation of "chronic endemic dental fluorosis", or "mottled enamel."

Petitioners contend that any so-called "public health" measure which could possibly harm one child cannot possibly be a valid and legal subject of the exercise of a municipality's police powers.

Questions Presented Raised Below

The third amended petition filed in the trial Court sought to enjoin fluoridation of Chicago's public water supply and attacked the validity of the resolution purporting to direct fluoridation on several grounds. The Constitutional questions were first raised in this cause in said trial Court, and were raised in said petition. It was stated in said petition that there is but one source of public water supply and that compelling one to drink medicated water violates the freedom of religion of a Christian Scientist as guaranteed by the 1st and 14th Amendments to the U. S. Constitution and by Section 3 of Article 2 of the Illinois Constitution. (Ab. 11)

It was also stated in said petition that fluoridation of the Chicago public water supply against the will of plaintiffs deprived them of their liberty and property, in contravention of the 14th amendment to the U. S. Constitution and Section 2 of Article 2 of the Illinois Constitution. (Ab. 15, 16)

These allegations were denied by respondents and that denial was affirmed by the Master and Judge Epstein.

These questions were also raised in the Supreme Court of Illinois by petitioners. For example, in Section V of their brief, the following appears:

> "Administration of Fluoride Through the Public Water System Violates the Fundamental Legal and Constitutional Rights of Plaintiffs and Every Citizen of Chicago, and Especially the Constitutional Rights of Those Persons Who Profess a Belief in the Christian Science Faith, Including Plaintiff Walter Olson."

Questions relating to the use of the City's police powers were also raised in this cause in said trial Court, and were raised in said third amended petition. (Ab. 18, 19)

These questions were also raised in the Supreme Court of Illinois. For example, in Section IV of the brief therein the following appears:

> "The City Council of the City of Chicago grossly exceeded the City's police power when it purported to direct fluoridation of the city's public water supply."

Respondents filed their brief and plaintiffs below filed a "Reply Brief" which also included reference to said matters.

The validity and construction of the resolution and questions relating to said Constitutional matters were also referred to many times in the course of the 51 hearings held before the Master, in hearings before Judge Epstein, and in argument before the Illinois Supreme Court.

The Illinois Supreme Court, in affirming the trial Court, denied that fluoridation of the Chicago water supply violated the City's police powers or violated constitutional guarantees of due process of law, and, as previously noted, ignored as "moot" questions relating to the medication against their will of Christian Scientists through administration of fluoride, and whether or not this is a violation of religious freedoms guaranteed by the First Amendment.

REASONS RELIED ON FOR ALLOWANCE OF THE WRIT

This Court has yet to rule concerning the important Constitutional issues raised by fluoridation. This cause, termed by the Master as the "most exhaustive judicial investigation ever conducted" as to fluoridation, presents those issues to the Court fully and completely for the first time.

Petitioners believe that the basic and fundamental issue involved in this cause is whether or not the citizens of Chicago shall have the "individual choice" and freedom as to their medication which has always been the Constitutional birth right of every American, or whether "state compulsion" under the Aldermen of the Chicago City Council shall take its place.

Petitioners submit that the rights of freedom of religion and freedom from "mass medication" transcend all other issues involved in this cause. They respectfully submit that these rights, as protected and guaranteed by the United States Constitution, have been, and are being violated.

Petitioners most earnestly pray that this Court shall protect and maintain their valued rights and freedoms by granting the Writ of Certiorari here sought, and, ultimately, after review of this cause, by permanently enjoining fluoridation of the Chicago water supply.

I.

IT VIOLATES THE RELIGIOUS FREEDOMS GUARANTEED BY THE FIRST AMENDMENT OF THE U. S. CONSTITUTION TO PETITIONER LENONE AND OTHER MEMBERS OF THE CHRISTIAN SCIENCE FAITH FOR THE CITY OF CHICAGO TO ADMINISTER FLUORIDE TO THEM AGAINST THEIR WILL.

Petitioner Lenone respectfully submits that fluoridation of the Chicago water supply infringes and violates his right to religious freedom guaranteed by virtue of the United States Constitution, prohibiting the free exercise of his religion.

The applicable portion of the First Amendment to the U. S. Constitution provides that "Congress shall make no law respecting an establishment of religion, *or prohibiting the free exercise thereof.*" (Emphasis added.) The Fourteenth Amendment makes the prohibition applicable to the States, which, of course, would include any subdivision thereof, and, in the case at bar, the City of Chicago.

This Court has held in *Cantwell* v. *Connecticut,* 310 U.S. 296, at page 303:

> "The fundamental concept of liberty embodied in that Amendment (Fourteenth) embraces the liberties guaranteed by the First Amendment."

See also *Everson* v. *Board of Education,* 330 U.S. 1, 15, and *Schneider* v. *Irvington,* 308 U.S. 137, 160.

It cannot be gainsaid that all of the petitioners in this cause are being subjected, *against their will,* to medication added to their sole source of water supply. So, also, are the other citizens of Chicago. They have not been accorded an opportunity to vote for or against fluorida-

tion, but have had it literally forced upon them, by a majority of the Aldermen composing the City Council, through a mere resolution.

Of even greater importance, however, is the fact that it has been established and cannot be denied that the religious liberty of one of the petitioners in this cause, Jose M. Lenone, has been, and is being, violated daily by fluoridation of the water he of practical necessity has to drink.

In this regard he is representative of the many thousands of other members of the Christian Science Church in Chicago who are likewise forced to submit to the medication of their drinking water and whose guaranteed religious freedom is also being violated and rendered meaningless.

Petitioner Lenone is a retired Lieutenant Colonel in the United States Army Reserve. He has been a resident of the City of Chicago since 1911, and is and since 1913 has been, a member of The First Church of Christ, Scientist, Boston, Massachusetts, the so-called "Mother Church". He is, and since 1914 has been, also a member of the Fifth Church of Christ, Scientist, Chicago, having been the President of the Board of Directors of said Fifth Church and also its Treasurer. (See Appendix "B" hereto)

Erroneous Attempt to Exclude Petitioner Lenone

As previously noted, shortly before plaintiff Walter Olson, passed away, a motion to dismiss his appeal, then already argued and under advisement, was filed with the Illinois Supreme Court. However, on December 30, 1963, before an order on the motion was entered, he passed away. Petitioner Lenone immediately sought to intervene because the untimely death of Walter Olson had brought

about a situation whereby no Christian Scientist remained a party herein. (See Appendix B herein for the text of his petition.)

Section 26.1 of the Illinois Civil Practice Act provides for intervention *as of right* "when the representation of the applicant's interest by existing parties is or may be inadequate and the applicant will or may be bound by a judgment, decree or order in the action . . ." (See Appendix "E" hereto for applicable text.) Despite the fact that Petitioner Lenone's application to intervene was in meticulous compliance with this statute, the Court denied it, arbitrarily and without hearing. Its opinion herein, rendered subsequently, dismissed the vital religious issues herein as being "moot", the opinion also stating "this Court, *unless the public interest demands it*, will not consider abstract questions . . ." (Emphasis added)

Petitioners respectfully submit that the "public interest" did demand consideration of these questions by the Court, and that it was grossly erroneous for the lower Court to deny intervention to Petitioner Lenone and to ignore the important religious issues involved herein.

Petitioner Lenone believes in and subscribes to the tenets, beliefs, and doctrine of the Christian Science Church. As to these tenets, Plaintiff Walter Olson testified in this cause:

> "The doctrine of the Christian Science Church denies the beneficial effect of material remedies and teaches sole reliance on the power of God. The Church is affirmatively opposed to material medicine as to its members."

This testimony, and all other evidence rendered herein by plaintiff Olson, remains unchanged, unrefuted, and undenied.

Concerning this evidence, Petitioner Lenone states (see Appendix "B" hereto):

> "The stand and position taken by Walter Olson herein was precisely representative of the stand and position heretofore held, and now held, by your petitioner with respect to fluoridation of the Chicago water supply, and particularly with regard to petitioner's religious Christian Science beliefs and rights."

Petitioner Lenone has further stated herein (see Appendix "B" hereto) that he is opposed to the use of medication of any kind and objects to mass medication through the addition of a fluoride to his drinking water, and that the public water supply of the City of Chicago is the only public and practicable water supply available to him. He states that he therefore drinks fluoridated water under compulsion in spite of his strong religious objections thereto.

The Church and Fluoridation

Other Christian Scientists, high in the councils of their Church, have stated their objections on religious grounds to fluoridation in official policy statements, as is stated in the article by Alan H. Nichols, Esq., entitled "Freedom of Religion and the Water Supply", in Volume 32, Southern California Law Review. That article is a well-documented and exhaustive one on the subject, and the attention of the Court is respectfully directed to it. Of particular interest so far as the case at bar is concerned is the following, commencing at page 159:

> "This mixture of fluoridation and religious freedom is neither hypothetical nor unrealistic. For example, Christian Scientists have stated their objections on religious grounds to fluoridation in official policy statements and under oath in at least one legal proceeding."

In a foot-note on page 159 as an example of "official policy statements" of Christian Scientists, the following appears:

> "Statement of Inman H. Douglas, Manager of Washington, D. C., office of the Christian Science Committee on Publication as authorized by the First Church of Christ Scientist, Boston, Massachusetts. *Hearings Before the Senate Committee on Constitutional Rights*, 84 Cong., 1st Sess. 3-6, 8 (1955)."

In another foot-note on the same page, the legal proceeding referred to is given as:

> "*City of Oroville* v. *California Water Service Co., supra* note 1. Hearings before the Public Utilities Commission Examiner. See comments, McChesney of the Northern California Committee on Publication of the Christian Science Church, transcript at 518, 521; Riley of the Southern California Committee on Publication of the Christian Science Church, transcript at 533-35; Petitioner Clark transcript at 520."

Another foot-note appearing on the same page is as follows:

> "This Church has always opposed the use of drugs, and fluorides are drugs. . . . A drug is 'any substance used as a medicine'. A medicine is 'any preparation used in treating a disease'. Webster's New Inter-Collegiate Dictionary (1951). Fluorides as used in the water supply are for treatment of the disease of dental caries."

Regarding a situation such as is involved in the case at bar, this article states:

> "If fluoridation were upheld in the highest available state or federal court contrary to a petitioner's claim of religious liberty, an appeal would lie to the United States Supreme Court.

> "For purposes of discussion the stage has been set. The United States Supreme Court would have to decide: Are the basic principles of religious freedom, as previously announced, to be followed? How are these principles to be applied in a specific case like the fluoridation of water supplies?"

After a lengthy and penetrating analysis of all the legal and Constitutional questions involved, the article concludes with the following (page 176):

> "*Fluoridation of public water supplies is a deprivation of religious liberty* and does not fall within the exceptions of immorality, interference with the liberty of others or clear and present danger." (Emphasis added.)

Abingdon and Sherbert Cases

On June 17, 1963, this Court issued its decisions in the cases of *Abingdon School District* v. *Schempp* and *Murray* v. *Curtlett* (374 U. S. 203).

The *Abingdon* and *Murray* cases involved the constitutionality of prayers and Bible reading in public schools, when heard at the option of the pupil involved. This elective procedure was ruled unconstitutional by this Court as infringing upon the religious guarantees of the First Amendment. The majority opinion, rendered by Mr. Justice Clark, contains a penetrating analysis of the purview and sweep of these guarantees, most applicable to the case at bar.

Said opinion states in part:

> "The test may be stated as follows: What are the purpose and the primary effect of the enactment?
>
> "If either is the advancement or inhibition of religion then the enactment exceeds the scope of legis-

lative power as circumscribed by the Constitution. That is to say that to withstand the structures of the establishment clause there must be a secular legislative purpose and a primary effect that neither advances nor inhibits religion. *Everson* v. *Board of Education, supra; McGowan* v. *Maryland, supra,* at 442.

"The free exercise clause, likewise considered many times here, withdraws from legislative power, State and Federal, *the exertion of any restraint on the free exercise of religion.* Its purpose is to secure religious liberty in the individual by prohibiting any invasions thereof by civil authority."

And:

"Further, it is no defense to urge that the religious practice here may be relatively minor encroachments on the First Amendment. The breach of neutrality that is today a trickling stream may all too soon become a raging torrent and, in the words of Madison, 'it is proper to take alarm at the first experiment on our liberties'."

On June 17, 1963, this Court also rendered its decision in the case of *Sherbert* v. *Verner,* 374 U.S. 398, 83 S. Ct. 1790.

In the *Sherbert* case a Seventh Day Adventist had declined, because of her religious beliefs, to work on Saturday, and she was discharged by her employer. Unemployment compensation was refused because she declined to accept any employment which involved Saturday work. The South Carolina Supreme Court upheld the denial of compensation, but this Court reversed.

The opinion by Mr. Justice Brennan states (p. 403):

". . . it is true that no criminal sanctions directly compel appellant to work a six-day week. But this

> is only the beginning, not the end, of our inquiry. For '(i)f the purpose or effect of a law is to impede the observance of one or all religions or is to discriminate invidiously between religions, that law is constitutionally invalid even though the burden may be characterized as being only indirect' ".

And (page 404):

> "The ruling forces her to choose between following the precepts of her religion and forfeiting benefits, on the one hand, and abandoning one of the precepts of her religion in order to accept work, on the other hand. Governmental imposition of such a choice puts the same kind of burden upon the free exercise of religion as would a fine imposed against appellant for her Saturday worship."

Noting that only extreme conditions merit any restriction of religious liberty, Mr. Justice Brennan stated (page 406):

> "It is basic that no showing merely of a rational relationship to some colorable state interest would suffice; in this highly sensitive constitutional area, '(o)nly the gravest abuses, endangering paramount interests, give occasion for permissible limitation,' *Thomas* v. *Collins*, 323 U.S. 516, 530. No such abuse or danger has been advanced in the present case."

Mr. Justice Douglas wrote a separate concurring opinion. He noted that there are people of many diverse faiths, and he reviewed some of their beliefs. He then stated (page 411):

> "These suffice however, to show that many people hold beliefs alien to the majority of our society—beliefs that are protected by the First Amendment but which could easily be trod upon under the guise of 'police' or 'health' regulations reflecting the majority's views."

And (page 412):

> "The harm is the interference with the individual's scruples or conscience—an important area of privacy which the First Amendment fences off from government. The interference here is as plain as it is in Soviet Russia, where a churchgoer is given a second-class citizenship, resulting in harm though perhaps not in measurable damages.
>
> "This case is resolvable not in terms of what an individual can demand of government, but solely in terms of what government may not do to an individual in violation of his religious scruples."

It will be apparent to the Court that the religious deprivations involved in the case at bar go far beyond those which impelled our highest Court to act in the *Abingdon* and *Sherbert* cases, cited above.

The coercive effect of fluoridation, so far as Petitioner Jose Lenone is concerned, is that it prohibits him from exercising freedom as to whether or not he should be forced to drink water to which a drug (fluoride) has been added, in direct violation of one of the fundamental principles of his Christian Science faith, and in direct violation of the "free exercise clause" of the First Amendment, which guarantees complete freedom in the practice of his religion.

Christian Scientists do not believe in drugs or medication of any sort for the treatment of disease but rely solely upon prayer and divine intervention. Naturally, they are opposed to having the public water supply, which they must use because no other ready or public source of supply is available, fluoridated subjecting them to mass medication against their will and in violation of the right guaranteed them by the United States Constitution to be uninhibited *in the exercise* of their religious freedom.

In imposing fluoridation of Chicago's public water supply upon the citizens of Chicago, the City Council "inhibited", and continues each day to "inhibit" the exercise of religious freedom by the citizens of a very substantial segment of Chicago's population, namely, Petitioner Lenone and others (numbering many thousands) who profess a belief in the Christian Science faith and its principles.

Petitioner Lenone most earnestly prays that this Court shall protect and maintain his precious and valued right of freedom of religion by granting the writ of certiorari here sought, and by ultimately decreeing herein that fluoridation of the Chicago water supply shall be permanently enjoined.

II.

IT VIOLATES THE PERSONAL LIBERTIES GUARANTEED BY THE FOURTEENTH AMENDMENT OF THE U. S. CONSTITUTION TO PETITIONERS HEREIN FOR THE CITY OF CHICAGO TO ADMINISTER FLUORIDE TO THEM AGAINST THEIR WILL.

Fluoridation of the public water supply of the City of Chicago by adding a fluoride, a deadly poison, forcing the citizens against their will to drink the water because there is no other ready supply available, violates the right of all Chicago's citizens to that due process of law guaranteed by the Fourteenth Amendment to the United States Constitution.

There are, of course, some cases in which fluoridation of a public water supply has been upheld. Some of these will be referred to below. There are also cases in which fluoridation has been disapproved.

Decisions were rendered permitting fluoridation in:

Chapman v. *Shreveport*, 225 La. 859, 74 So. 2d 142;
Dowell v. *Tulsa*, 273 P. 2d 859;
DeAryan v. *Butler, Mayor*, 119 Cal. App. 2d 674, 260 P. 2d 98;
Readey v. *St. Louis Water Co.*, 357 S.W. 2d 622;
Wilson v. *City of Council Bluffs*, 110 N.W. 2d 569;
Krause v. *Cleveland*, 163 Ohio St. 559, 127 N.E. 2d 609;
Baer v. *Bend*, 206 Or. 221;
Froncek v. *Milwaukee*, 269 Wis. 276, 69 N.W. 2d 242;
Kaul v. *City of Chehalis*, 45 Wash. 2d 616, 277 P. 2d 352.

In several of the above cases, writs of certiorari were denied by this Court.

Although some of the above cases might at first blush seem persuasive so far as the case at bar is concerned, a reading of the decisions discloses some basic differences between them and this cause in the factual situations considered:

1. In the decisions permitting fluoridation, the respective Courts apparently assumed that fluoridation as such would be beneficial to all the children treated. None of the Courts had before them the evidence adduced in this cause demonstrating the questionable scientific basis of the whole fluoridation thesis, its experimental nature, and the fact that there is no real proof that it actually does reduce prevalence of tooth decay.

2. None of the Courts rendering the above decisions had before them the proof adduced in this cause, show-

ing the definite harm which accrues to a high proportion of the children treated from administration of fluorides, and the potential damage which can occur to members of the population as a whole. Plaintiffs submit that no Court of justice anywhere would knowingly sanction a program which, under the pretense of *benefitting* public health, *actually causes harm* to some individuals who are subjected to it.

3. None of the Courts rendering the above decisions had before them an applicant for relief who, like petitioner Lenone in the case at bar, was actually being deprived of the religious freedom guaranteed to him under the First and Fourteenth Amendments to the United States Constitution. In this respect, this is a case of first impression anywhere.

Elsewhere, for example, in Canada and Sweden, Courts of last resort have ruled against fluoridation. See *The Municipality of Metropolitan Toronto* v. *The Corporation of the Village of Forest Hill* (9 DLR 2d 113), Supreme Court of Canada—1957, and *Assn. for Promotion of Health* v. *Town of Norrkoping*, Supreme Administrative Court of Sweden—1961.

Kaul v. City of Chehalis.

The case of *Kaul* v. *City of Chehalis*, 45 Wash. 2d 616, 277 P. 2d 352, one of the cases noted above, was an appeal to the Supreme Court of Washington from the decision of the Superior Court of Lewis County dismissing a suit filed by one Arthur A. Kaul, a taxpayer and registered voter who had lived in Chehalis for fourteen years and had used water from the City's water system and paid for it, seeking to enjoin the City from fluoridating the water supply. The appeal resulted in a five-to-four

decision of the Supreme Court of Washington affirming dismissal.

It will be apparent from a reading of the majority decision in the *Kaul* case that no claim was made by the appellant that fluoridation would affect the wholesomeness of the water supply, and it was assumed without argument that addition of fluoride to the Chehalis water supply would actually prevent tooth decay. No evidence of harm was before the Court in the uncontested findings of fact it considered. It is interesting to note, however, that the majority opinion does state the following (page 353):

> "If the water is fluoridated, it will be necessary for appellant and all other users 'to use it for domestic purposes including drinking, because there is no other practical source of supply.' "

This is the precise situation presented in the case at bar, where petitioners have no practical source of water supply other than that furnished by the City of Chicago.

In the *Kaul* case, despite the factual situation noted vigorous dissenting opinions were filed and petitioners feel that, because the lower Court decision was affirmed by only five of the nine distinguished Justices composing the Supreme Court of Washington, what was said in the dissenting opinions becomes important and may properly be considered by this Honorable Court.

The dissenting opinion by Mr. Justice Matthew W. Hill contains the following, at page 358:

> "We are not here concerned with any question as to appellant's right to be furnished wholesome water, or with any other rights which he might have in connection with the city's duty to furnish water. *The significant circumstances are that the ordinance is designed solely for the purpose of effecting the application of fluorine to the teeth of the residents of Chehalis*

in order to minimize tooth decay in some children. The use of the city water system as a means of accomplishing this purpose means that the aforesaid 'treatment' becomes compulsory for any person who has to rely upon the city water supply as his source of drinking water. *Thus the liberty of which appellant is deprived is the right to decide of his own free will whether he desires to apply fluorine to his teeth for the purpose of preventing tooth decay, based upon his own opinion as to whether it would be advantageous or disadvantageous to his personal health—a matter, incidentally, on which there is marked and bitter divergence of opinion within the medical and dental professions.*

"It must be conceded that this is a personal liberty which falls within the constitutional protection of due process." (Emphasis added.)

The Fourteenth Amendment to the United States Constitution extends and makes important rights guaranteed by the Constitution applicable to the States. The pertinent portion reads as follows:

> "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; *nor shall any State deprive any person of life, liberty, or property, without due process of law;* nor deny to any person within its jurisdiction the equal protection of the laws." (Emphasis added.)

Fluoridation of the Chicago water supply infringes and violates the rights guaranteed to petitioners by the Fourteenth Amendment. Petitioners respectfully submit that the decision herein of the Illinois Supreme Court permitting the City of Chicago to force them, against their will, to submit to fluoridation of their water, and to the compulsory medication thereby involved, was grossly erroneous, and the writ of certiorari here sought should be granted by this Court that said decision may be reviewed and ultimately reversed.

III.

THE CITY OF CHICAGO HAS VIOLATED ITS POLICE POWERS BY ADMINISTERING FLUORIDE TO THEM AGAINST THEIR WILL, WHEN SUCH MEASURES ARE NOT NECESSITATED BY PRESSURE OF GREAT PUBLIC DANGERS OR REQUIREMENTS OF PUBLIC SAFETY, AND CERTAIN PERSONS CAN ACTUALLY BE HARMED BY FLUORIDATION.

The City Council of the City of Chicago grossly exceeded its police power when it directed that the water used for drinking purposes by the citizens of Chicago should be fluoridated, in effect prescribing an indeterminate dosage of fluoride for every man, woman, and child. It is, of course, admitted that the police power of the City is very broad, but petitioners respectfully submit that it must be exercised in such a manner as not to violate any of the constitutional rights guaranteed to them by the Constitutions of the State of Illinois and the United States. Subjecting the citizens to mass medication by forcing them against their will to drink fluoridated water violates the due process of law guaranteed by the Fourteenth Amendment to the United States Constitution and Section 2 of Article II of the Illinois Constitution.

Petitioners recognize that the said rights guaranteed to them must on occasion, when warranted by circumstances, give way to acts performed by the municipality for the protection of the population as a whole, as, for example, when there is an epidemic of contagious disease, or such an epidemic is threatened. But there is nothing about fluoridation that justifies a deprivation of such rights, "dental caries", or tooth decay, not being an infectious or contagious disease, necessitating protection of the population from a possible epidemic.

In this regard, the City Code of Chicago has clearly defined the limits of the City's police powers. Section 9-18 of said City Code provides that the Chicago Board of Health shall not have power to compel submission by anyone to medication "*except when there shall be an epidemic of a disease, or an epidemic is or appears to be imminent.*" (Emphasis added.)

Jacobsen Case

The Illinois Supreme Court decision herein cited the case of *Jacobsen* v. *Massachusetts*, 197 U. S. 1, 25 S. Ct. 358, 49 L. Ed. 643, as authority for sanctioning fluoridation. In the *Jacobsen* case this Court upheld compulsory vaccination to prevent spread of communicable disease. It was there stated:

> "There is, of course, a sphere in which the individual may assert the supremacy of his own will and rightfully dispute the authority of any human government, especially of any free government existing under a written constitution, to interfere with the exercise of that will. But it is equally true that in every well-ordered society charged with the duty of conserving the safety of its members the rights of the individual in respect of his liberty may at times, *under the pressure of great dangers* be subjected to such restraint, to be enforced by reasonable regulations, *as the safety of the general public may demand.*" (Emphasis supplied.)

There is not one iota of evidence herein to show that fluoridation of the Chicago water supply is necessary because of the "pressure of great dangers", or to safeguard the "general public" from harm.

Regarding this matter the following in Mr. Justice Hill's dissent in *Kaul* v. *City of Chehalis* is of particular interest (page 361):

"If fluorine is indeed the key to dental health and the application of fluorides is readily available to all who desire it, then education and persuasion, not compulsion, seem to be called for. Compulsion is justified on occasion for the protection of the public when dealing with contagious disease, but when we search for the 'pressure of great dangers' in the instant case, it simply is not there. The ordinance providing for fluoridation is unconstitutional on the ground that it is an unwarranted and unjustified invasion of the liberty guaranteed the appellant by the United States constitution, amendment 14, and by our state constitution, Art. I § 3."

Lawton v. Steele

The decision of the Illinois Supreme Court herein also cited the case of *Lawton* v. *Steele*, 152 U. S. 133, 14 S. Ct. 499, 38 L. Ed. 385, as authority for sanctioning fluoridation. The seizure and destruction of fishing nets, pursuant to a statute of the State of New York, was involved in that case. The opinion contains the following with regard to the "police power" of a State or municipality (Page 136):

"The extent and limits of what is known as the police power have been a fruitful subject of discussion in the appellate courts of nearly every State in the Union. It is universally conceded to include everything *essential to the public safety, health, and morals*, and to justify the destruction or abatement, by summary proceedings, of whatever may be regarded as a public nuisance."

The opinion then goes on to mention quite a number of acts that may be committed by a State under this "police power", and the opinion contains the following (Page 137):

"To justify the State in thus interposing its authority in behalf of the public, it *must appear* first, that

> the interests of a *public generally*, as distinguished from those of a particular class, *require such interference;* and, second, that *the means are reasonably necessary* for the accomplishment of the purpose, . . ." (Emphasis added.)

In the case at bar, it cannot be truthfully said that fluoridation of the water supply is required in the interests of the "public generally", for as clearly appears from the record, only children from 6 to 12 years of age are even claimed to be benefitted by it. Wherein in this cause could it be claimed that fluoridation is "essential to the public safety, health, and morals"? The evidence actually adduced would indicate, on the contrary, that *enjoining of fluoridation* is the step most necessary for protection of public safety and health! And wherein, in view of the many alternative methods of administering fluorides, could it be claimed that the mass method adopted by the Chicago City Council meets the *Lawton* case requirement necessitating that the "means are reasonably necessary for accomplishment of the purpose"?

This opinion of the Court, then, may properly be cited in support of the prayer of petitioners in the case at bar.

Some Children Are Bound to be Harmed

It was claimed herein by the City that fluoridation of the Chicago water supply is a proper exercise of its police powers, being rendered necessary for *protection* of public health through reduction of dental decay. Petitioners respectfully submit that such an exercise of the City's police powers could not be possibly justified, proper, or legal if *even one* person in Chicago could be harmed through fluoridation.

It is a matter of common knowledge that where the dosage of fluoride administered to the child is largely dependent upon his or her thirst and consumption of water, and is not predicated upon a measured dose directed to the child's alleged needs and requirements, some children are bound to consume too much fluoride. When this situation occurs, the child becomes afflicted with a condition known as "chronic endemic dental fluorosis", or "mottled enamel".

The American Illustrated Medical Dictionary (21st edition) defines "mottled enamel" as follows (T1304):

> "A chronic endemic dental fluorosis that is found in communities using a drinking water that contains one part or more of fluorine per million. The permanent teeth of children so raised tend to erupt more or less chalky white in color, and later tend to become pitted and stained yellow, brown or almost black. Called also chronic endemic fluorosis."

Respondents attempted to minimize the seriousness of dental fluorosis, or mottled enamel, by claiming that incidence of the disease would probably not be "severe", or "disfiguring", that mottled enamel merely is a "cosmetic effect" of no consequence, and that an "expert" is required to detect it.

Actually mottled teeth are readily visible to the eye, and it certainly does not require an "expert" to detect the destructive effects involved.

Various degrees of mottled enamel are portrayed in the plates appearing herein as Plaintiffs' Exhibits 58 and 71, respectively (the same also being reproduced in the appendix to the abstract herein).

The unrefuted and undeniable evidence adduced in this cause *from the City's own witnesses* demonstrates that many children will contract this fluoride-caused disease.

Dr. H. Trendly Dean, "father of modern fluoridation", was one of the witnesses who testified for the City. Various surveys had been conducted by Dr. Dean for the U. S. Public Health Service to determine the incidence of chronic endemic dental fluorosis in naturally-fluoridated communities. Dr. Dean's testimony concerning these studies revealed:

In Marion, Ohio, 6% of the children examined had definite cases of chronic endemic dental fluorosis, and an additional 36% came under the "questionable" or "borderline" category, the fluoride content of the water supply being about 40% of what Chicago aims to maintain in its water. (Abst. 418)

In Clarksville, Tennessee, there was an incidence of 8.3% fluorosis, its water supply containing .2 of a part per million, or one-fifth the fluoride content which is the object of the Chicago fluoridation program. (Abst. 428.)

In Vicksburg, Mississippi, there was an incidence of 11% fluorosis, with .2 of a part per million in its water. (Abst. 428.)

In Aurora, Illinois, there was an incidence of 15% fluorosis. with 1.2 parts per million fluoride in its water. (Abst. 428.) (Note: The fluoride content of Chicago water has ranged as high as 1.35 parts per million since commencement of fluoridation.)

In Colorado Springs, Colorado, a city with naturally-fluoridated water containing only 2.5 parts per million of fluoride, there was a 73.8% prevalence of dental fluorosis among the children of that community. (T2054, Abst. 428)

Dr. Dean's studies revealed that in Kewanee, Illinois (.9 of a part per million), 35% of the children examined were

"borderline", or "questionable" cases, and *12.2%* had definite fluorosis. (Ab. 426)

The effect of fluoride upon the children of Chicago would obviously be the same as upon those residing in Kewanee, for example. Therefore, *using Dr. Dean's own statistics,* approximately *one in every eight* children affected by Chicago fluoridation will contract *definite fluorosis,* and an additional *35%* will fall in the "questionable" category, a total of *432,944 children* in both categories.

Petitioners submit that if *only one child* in the City of Chicago contracts chronic endemic dental fluorosis as a result of fluoridation, the misfortune thus occurring constitutes a gross and unwarranted invasion of that child's legal and Constitutional rights.

Petitioners regret that space herein precludes review of the evidence rendered herein by such pre-eminent experts as Dr. Frederick B. Exner, Dr. George Waldbott, Dr. J. H. Mick, Dr. Melvin Page, and others called by respondents, which outlines other harmful effects which can result from administration of uncertain and indiscriminate amounts of fluoride to a whole population. This evidence again is amply *corroborated* and *confirmed* by testimony adduced from the City's own witnesses.

Respondents submit, however, that what is hereinabove set forth should more than suffice to demonstrate that no pressure of great dangers or requirements of public safety necessitate administering fluoride to everyone in the City of Chicago, that many persons will in fact be harmed thereby, and that the City of Chicago has grossly violated its police powers in adopting such measures.

CONCLUSION.

For the foregoing reasons, petitioners respectfully request that this Honorable Court grant and issue its writ of Certiorari herein.

Respectfully submitted,

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